IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
JAIPUR
ORDER
S.B. Civil Writ Petition No.4602/01
Mst. Prem Bai Vs. Kela Ram & Ors.

Date of Order :: 23rd July, 2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri Vijay Choudhary, Advocate for petitioner.
Shri B.P. Pareek, Advocate for respondents.

REPORTABLE

The petitioner has challenged the judgment dated 17.8.2001 passed by the Board of Revenue and the judgment dated 5.1.1994 passed by the Sub-Divisional Officer and has prayed that the judgment passed by the Additional Divisional Commissioner dated 17.9.96 be restored and it be directed that the mutation no.254 inter alia in favour of the petitioner on 22.12.1992 by Tehsildar Sangodh was just and proper.

It is claimed that the petitioner being the only daughter of Shri Mangi Lal, she

continued to reside with him even after marriage in Village Dhulet of Tehsil Sangod. Shri Mangi Lal was the khatedar tenant of the land of khasra no.66. Since her father suddenly died on 20.12.92, after his death, she being her only legal heir, the mutation was opened in her name by Tehsildar on 22.12.92. The respondent no.1 filed appeal against such mutation stating that father of the petitioner Mangi Lal had executed a will in his favour on 11.12.1992 and further that he was not given opportunity of hearing by entering the name of the petitioner. The SDO by order dated 5.1.94 remanded the matter back to the Tehsildar on the premise that since there was registered will in favour of the respondent no.1, he should be heard and matter should be decided afresh. Being aggrieved with the order dated 5.1.94 passed by the SDO, Ramganj Mandi, the petitioner

filed appeal before the Additional Divisional Commissioner, Kota who by his judgment dated 17.6.96 allowed the appeal and set aside the order passed by the SDO, Ramganj Mandi. The respondent no.1 thereupon filed revision petition before the Board of Revenue asserting therein that the deceased Mangi Lal has executed a will in his favour and this aspect has not been appreciated by the Additional Divisional Commissioner. The Board of Revenue by its order dated 17.8.2001 allowed the appeal and restored the order of the SDO. The petitioner has now filed this writ petition with the prayers enumerated above.

I have heard Shri Vijay Choudhary, the learned counsel for the petitioner and Shri B.P. Pareek, the learned counsel for the respondent.

Shri Vijay Choudhary, the learned counsel for the petitioner argued that the orders passed by the Board of Revenue and SOD, Ramganj Mandi are contrary to the material on record and the findings recorded therein are perverse. Petitioner being natural daughter and the only legal heir of the deceased Mangi Lal, there was nothing illegal in mutating the land owned by Mangi Lal in her favour. She was a legal heir of class-1. No notice of hearing was required to be given to the respondent no.1 prior to mutating the land in favour of the petitioner. It was argued that the learned Additional Divisional Commissioner has rightly held that if the respondent no.1 wanted to establish his rights, the only course open to him only is to get the probate of the so called will. The land could not be mutated in his favour on the basis of so called will, genuineness of

which was seriously disputed by the petitioner. The Board as well as SDO did not consider that the petitioner was living with her father since birth and she cannot be deprived of the property of her father. The so called will was a forged document because respondent no.1 did not reside in the Village Dhulet and even did not have any house in the village. He in fact was living in Village Kesosara for last more than 20 years. According to Section 8 and 10 of the Hindu Succession Act, 1956, petitioner is a legal heir of class 1 of the Schedule as she is the sole and real daughter of deceased Mangi Lal.

Shri Vijay Choudhary, the learned counsel for the petitioner relied on the judgment of Hon’ble Supreme Court in Mrs. Hem Nolini Judah Vs. Mrs. Isolyne Sarojbashini Bose & Ors., AIR 1962 SC 1471 (V 49 C 215) and on the authority of that judgment, argued that

Section 213 of the Succession Act, 1925 creates a bar on the establishment of any right under will by any executor or a legatee unless probate or letters of administration of the will have been obtained, whether that right is claimed by the person as a plaintiff or defendant. Shri Vijay Choudhary also relied on the judgment of co-ordinate bench of this Court in Ravindra Kumar Chaturvedi vs. Board of Revenue & Ors., RLW 1997(2) (Raj.) page 1004 for the same proposition.

On the other hand Shri B.P. Pareek, the learned counsel for the respondents opposed the writ petition and argued that the disputed property was the self acquired property of Mangi Lal and therefore he had full right to decide as to who should get his property after his death and he did so by execution of will, therefore, the respondent has legitimate say in the matter. He argued

that the learned Board of Revenue and the SDO have correctly decided the matter and that there was no such infirmity in any of these two orders which calls for interference by this Court.

It was argued that the learned Additional Commissioner has wrongly required the respondents to first obtain the probate of the will. This Court has in several cases on consideration of Section 213 of the Succession Act, taken the view that obtaining probate of will is not necessary in the State of Rajasthan. Reliance in this connection has been placed on decision of this Court Sultan Singh Vs. Brij Raj Singh, 1997 (1) WLC 368 (Raj.) and Mst. Jadav Vs. Ram Swarup, 1960 RLW 685. He argued that the orders passed by the Board of Revenue and that of the SDO did not suffer from any legal error so as to justify interference by this Court. It was

therefore prayed that the writ petition be dismissed.

I have given my thoughtful consideration to the arguments advanced by learned counsel for the parties and perused the material on record.

What is to be decided in the present case is whether the mutation entered in favour of the petitioner who admittedly is the sole daughter of deceased Mangi Lal could be set aside just because the respondent no.1 who claims to have acquired rights in the same property by virtue of will executed in his favour by Shri Mangi Lal was not provided an opportunity of hearing. In other words, whether the order dated 22.12.92 passed by the Tehsildar mutating the land of Mangi Lal in favour of his daughter could be legally sustained. The SDO has set aside the order of mutation holding that the revenue officers

are not required to enter into complicated questions of law, customs and uses at the time of making mutation entries. He in this connection made reference to Rule 132 of the Rajasthan Land Revenue (Land Records) Rules, 1957 (for short- the Rules). The SDO therefore set aside the mutation order with the direction to Tehsildar to pass fresh mutation order after hearing the respondent no.1. When the matter reached before the Additional Divisional Commissioner, he held that the petitioner was the sole surviving daughter of deceased Mangi Lal and there was nothing wrong in the order of Tehsildar mutating his lands in favour of the petitioner. If the respondent was aggrieved therewith, the only course open to him was to file a regular suit for getting his right / title decided. The Board however reversed the judgment of the Additional Divisional

Commissioner while referring to Rule 131 of the said Rules that the mutation entries could be made solely on the basis of will and even revenue authorities had the power of holding summary enquiry so as to decide the title of the parties. Since the will in favour of the respondent no.1 was registered, the same could not be ignored by Tehsidlar. Much has been argued by both the sides on the question of necessity of obtaining probate. This question has been considered by judgment of this Court in Sultan Singh and Mst. Jatav, supra. In fact the judgment in Mst. Jadav was based on earlier division bench judgment of this Court in Sunderlal & Teeja vs. Nena, D.B. Civil Regular First Appeal No.83/1952 decided on 16.11.54. Recently yet another division bench judgment of this Court has taken a similar view in Mukund Bihari Sharma Vs. Shri Satya Narayan, D.B. Civil Special

Appeal (W) No.1232/06 decided on 2.4.2007. Therefore, I am inclined to uphold the argument of learned counsel for the respondent that so far as the State of Rajasthan is concerned, obtaining probate of will is not necessary but that point will not culminate in decision of the issue in his favour.

In my considered view, the Sub-Divisional Officer as also the Board of Revenue misconstrued the provisions relating to mutation especially Rule 131. Rule 131 of the Rules of 1957 provides that status of khatedar or gair khatedar tenant cannot be altered except by agreement, in consequences of a decree or an order binding upon the parties and in accordance with the facts proved or admitted. Clause (ii) of Rule 131 provides that in cases of inheritance a summary inquiry into the title is necessary.

Where it is claimed that property devolves by reason of will, this should be treated as a case of succession by inheritance and the inquiry will include an enquiry into the validity of the will. Rule 132 refers to the transfer by gift, sale, bequeath or mortgage and provides that in all these cases, Patwari should ascertain whether the deed has been registered or not and should personally inspect it and in case it is not registered he should not open mutation. These rules in so far as the facts of the present case are concerned could be relevant only if a revenue authority / Tehsildar decided to mutate the land in favour of the respondent no.1. These rules and the will executed in favour of respondent no.1 could not be made basis for holding the mutation entered in favour of the petitioner as illegal because the foundation of entering her name in the mutation was the

fact that she happened to be the daughter of deceased Mangi Lal and therefore only surviving legal heir. What was therefore required of the respondent no.1 was to establish his own rights. Besides, when the petitioner insisted that the will is forged one and on that basis resistance to the claim of the respondent no.1 could also be decided in any such legal proceeding initiated by the respondent for declaration of his rights and not in summary inquiry in the scope of rule 132, supra. Simply because the respondent no.1 was not heard while mutating the land in favour of the petitioner would not render the mutation as such illegal because the petitioner admittedly is the daughter of the deceased Mangi Lal. The respondent no.1 having not taken any steps to get his rights established to the exclusion of the

petitioner cannot question the correctness of the mutation entered in her favour.

In view of what has been discussed above, this writ petition is allowed and the order dated 17.8.01 passed by the Board of Revenue and the order dated 5.1.94 passed by the S.D.O. are set aside and the order passed by the Additional Divisional Collector is restored. There shall however be no order as to costs.

(Mohammad Rafiq),J.

RS/-